

§ 1604.3

who is not entitled to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluation.

§ 1604.3 General policy.

No attorney shall engage in any outside practice of law if the director of the recipient has determined that such practice is inconsistent with the attorney's full time responsibilities.

§ 1604.4 Compensated outside practice.

A recipient may permit an attorney to engage in the outside practice of law for compensation if § 1604.3 is satisfied, and

(a) The attorney is newly employed and has a professional responsibility to close cases from a previous law practice, and does so as expeditiously as possible; or

(b) The attorney is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction, and remits to the recipient all compensation received.

§ 1604.5 Uncompensated outside practice.

A recipient may permit an attorney to engage in uncompensated outside practice of law if § 1604.3 is satisfied, and the attorney is acting:

(a) Pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction; or on behalf of;

(b) A close friend or family member; or

(c) A religious, community, or charitable group.

PART 1605—APPEALS ON BEHALF OF CLIENTS

Sec.

1605.1 Purpose.

1605.2 Definition.

1605.3 Review of Appeals.

AUTHORITY: Secs. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

SOURCE: 41 FR 18513, May 5, 1976, unless otherwise noted.

45 CFR Ch. XVI (10–1–97 Edition)

§ 1605.1 Purpose.

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2 Definition.

Appeal means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

(a) Discourage frivolous appeals, and

(b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but

(c) Shall not interfere with the professional responsibilities of an attorney to a client.

PART 1606—PROCEDURES GOVERNING TERMINATION OF FINANCIAL ASSISTANCE

Sec.

1606.1 Purpose.

1606.2 Definitions.

1606.3 Grounds for termination.

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1606.17 Interim funding.

1606.18 Termination funding.

1606.19 Notice.

AUTHORITY: Secs. 1006(b) (1) and (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b) (1) and (3), 2996f(a) (1), (3), and (9), 2996f(d), 2996g(e), 2996j).

Legal Services Corporation

§ 1606.4

SOURCE: 43 FR 32770, July 28, 1978, unless otherwise noted.

§ 1606.1 Purpose.

By affording a recipient the opportunity for a timely, full, and fair hearing that will promote informed deliberation by the Corporation when there is reason to believe a grant or contract should be terminated, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

[43 FR 32770, July 28, 1978, as amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.2 Definitions.

(a) *Termination* means a decision that financial assistance to a recipient will be permanently terminated in whole or in part prior to expiration of the recipient's current grant or contract.

(b) *Director of a recipient* means the person who has overall day-to-day responsibility for management of operations by the recipient.

(c) *Presiding Officer* means the person appointed by the President to recommend a decision that a grant or contract should be continued or terminated.

[43 FR 32770, July 28, 1978, as amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.3 Grounds for termination.

A grant or contract may be terminated when:

(a) Termination is required by, or will implement a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class or a funding policy, standard, or criterion approved by the Board, except that termination shall not be based on a Corporation rule, regulation, guideline, or instruction that was not in effect when the current grant was made or when the current contract was entered into; or

(b) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from contract with the Corporation. In the absence of unusual circumstances, a grant or contract shall

not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action; or

(c) There has been substantial failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, a grant or contract shall not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

[48 FR 54199, Nov. 30, 1983]

§ 1606.4 Preliminary determination.

(a) When there is reason to believe that a grant or contract should be terminated, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for the proposed action, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for that action.

(b) The preliminary determination shall advise the recipient that it may, within 30 days of receipt of the preliminary determination, make written request for:

(1) A hearing under this part, or

(2) An informal conference under § 1606.5 of this part, with a subsequent right as there provided to request a hearing.

(c) The preliminary determination shall also advise the recipient of its right to receive interim, and to request termination, funding, under § 1606.17 or § 1606.18 of this part.

(d) If the recipient advises the Corporation that it will not request review, or if it fails to request review within the time prescribed in § 1606.4(b) or § 1606.5, the preliminary determination shall become final.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983; 50 FR 30713, July 29, 1985]

§ 1606.5 Informal conference.

On timely request by the recipient, the Corporation employee who made the preliminary determination shall promptly conduct an informal conference with the recipient at a time and place designated by the employee. The parties thereto shall exchange views, seek to narrow the issues, and explore the possibilities of settlement or compromise. At the conclusion of the conference, which may be adjourned for deliberation or consultation, the Corporation employee may, in writing, modify, withdraw, or affirm the preliminary determination. The recipient may, within 5 days thereafter, make written request for a hearing under §§ 1606.8 through 1606.14 of this part.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.6 Initiation of proceedings.

Within 10 days after receipt of a request for a hearing made under § 1606.4(b) or § 1606.5, the Corporation shall notify a recipient in writing of:

- (a) The name of the presiding officer, and of the attorney who will represent the Corporation;
- (b) The date, time and place scheduled for a prehearing conference, if any should be requested or ordered; and
- (c) The date, time and place scheduled for the hearing.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.7 Presiding officer.

(a) The presiding officer shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of the notice required under § 1606.6, the recipient shall notify the Corporation if it objects to the presiding officer on the grounds that the person does not satisfy the criteria stated in § 1606.7(a), or is personally biased. The notice shall state the specific facts and documents that the recipient contends support its objection, and, if a pre-hearing conference has not been scheduled, shall

request a pre-hearing conference for the purpose of presenting the objection. At the pre-hearing conference, the recipient and the Corporation may question the presiding officer for a reasonable period of time on matters relevant to the recipient's objection.

(c) The recipient shall, within 5 days following the pre-hearing conference, notify the Corporation of any further facts that it contends support its objections. The President shall, within 10 days following the pre-hearing conference, either sustain the objection and appoint a new hearing officer or overrule the objection.

(d) No objection to the appointment of a presiding officer may be made unless presented in the manner specified by this section.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.8 Pre-hearing conference.

(a) A pre-hearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

- (1) Proposals to define and narrow the issues;
- (2) Efforts to stipulate the facts, in whole or in part;
- (3) The probable number, identity, and order of presentation of exhibits and witnesses;
- (4) On the agreement of the parties, the possibility of presenting the case on written submission or oral argument;
- (5) The desirability of advance submission of some or all of the direct testimony in writing;
- (6) Any necessary variation in the date, time and place of the hearing;
- (7) Discussion of settlement; and
- (8) Such other matters as may be appropriate.

(b) In advance of the pre-hearing conference, the presiding officer may require a party to submit a written statement discussing any matter described in paragraph (a) of this section. After the pre-hearing conference, the presiding officer may establish the procedures, consistent with this part, to be followed at the hearing.

(c) The presiding officer may, at the pre-hearing conference or at any subsequent appropriate time prior to completion of the hearing, require the Corporation or the recipient, on sufficient notice, to produce a relevant document in its possession, to make a report not unduly burdensome to prepare, or to produce a person in its employ to testify, if any might offer a relevant and substantial addition to the accuracy or completeness of the record. With the consent of the presiding officer, a party may make a written submission before the hearing.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

§ 1606.9 Conduct of hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 days after the notice required by § 1606.6, and, whenever practical, shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community or recipient shall be held in a single centrally located place unless the presiding officer determines that an additional hearing place is required.

(b) The presiding officer shall preside, conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is made. The hearing shall be open to the public unless, for good cause and in the interests of justice, the presiding officer shall determine otherwise.

(c) The presiding officer may allow any interested person or organization to participate in the hearing if such participation will not broaden the issues unduly or cause delay, and will aid in proper determination of the issues.

(1) A person or organization wishing to participate in a hearing shall request permission from the presiding officer, stating the reason for the request, and the nature of the evidence or argument to be offered; and shall notify the Corporation and the recipient of its request.

(2) The presiding officer shall notify the Corporation, the recipient, and the person or organization requesting participation whether the request has been granted, and in case of denial

shall include a brief statement of the reasons therefor.

(3) The presiding officer may limit the scope or form of participation authorized under this paragraph.

(d) The Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(e) If a party fails, without good cause, to produce a person or document required under § 1606.8(c), the presiding officer may make an adverse finding on the fact or issue with respect to which production was required.

(f) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(h) A stenographic or electronic sound record, or a summary of the hearing shall be made in a manner determined by the presiding officer, and a copy shall be made available to a party upon payment of its cost.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983; 50 FR 30713, July 29, 1985]

§ 1606.10 Burden of proof.

At a hearing under § 1606.9:

(a) The Corporation shall have the obligation of proving, by a preponderance of the evidence, the existence of any disputed fact relied upon as justification for termination; and

(b) On all other issues, the Corporation shall have the obligation of establishing a substantial basis for terminating the grant or contract.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.11 Briefs and argument.

(a) Within 10 days after the close of the hearing, each party may, and, upon request of the presiding officer, shall, submit to the presiding officer, with service upon all other parties, proposed findings of fact and argument on matters of law or policy.

(b) The presiding officer may direct or permit oral argument at the close of the hearing or after submission of briefs.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

§ 1606.12 Recommended decision.

(a) As soon as practicable after the hearing, and normally within 20 days after its conclusion, the presiding officer shall issue a written recommended decision.

(1) Continuing the recipient's current grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(2) Terminating financial assistance to the recipient as of a particular date.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the evidence adduced at the hearing or on matters of which official notice was taken.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.13 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 days after receipt by a recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 10 days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) As soon as practicable after receipt of a request for review of a recommended decision, but not later than 30 days after the completion of the hearing, the President shall adopt, modify, or reverse the recommended decision, or direct further consider-

ation of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.12(b).

(d) A decision by the President shall become final upon receipt by a recipient.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983; 50 FR 30713, July 29, 1985]

§ 1606.14 Time and extension and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the person making the preliminary determination, prior to the time the presiding officer is designated;

(2) By the presiding officer, prior to the issuance of a recommended decision; or

(3) By the President at any time.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 90 days of the preliminary determination.

(c) Any other provision of these rules may be waived or modified:

(1) By the presiding officer with the assent of the recipient and of counsel for the Corporation; or

(2) By the President upon good cause shown and determined.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

§ 1606.15 Right to counsel.

At a hearing under § 1606.9, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The attorney designated may be an employee, or may be outside counsel retained for the purpose. Unless prior written approval is received from the Corporation, the fee paid to outside counsel shall not exceed the hourly equivalent of the rate of level V of the executive schedule specified in section 5316 of title 5, United States Code.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

Legal Services Corporation

§ 1607.3

§ 1606.16 Reimbursement.

If the recipient's grant or contract is continued or refunding is granted after a preliminary determination has been issued under § 1606.4, a recipient shall receive reimbursement by the Corporation, to the extent it has prevailed, for reasonable and actual expenses that were required in connection with proceedings under this part.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.17 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to continuation of its grant or contract. Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the act.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.18 Termination funding.

After a final determination to terminate a recipient's grant or contract, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.19 Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient, and may be sent to the chairperson of its governing body.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

PART 1607—GOVERNING BODIES

Sec.

- 1607.1 Purpose.
- 1607.2 Definitions.
- 1607.3 Composition.
- 1607.4 Functions of a governing body.
- 1607.5 Compensation.
- 1607.6 Waiver.

AUTHORITY: 42 U.S.C. 2996f(c); Pub. L. 103-317.

SOURCE: 59 FR 65254, Dec. 19, 1994, unless otherwise noted.

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel and to insure that the recipient is accountable to its clients.

§ 1607.2 Definitions.

As used in this part,

(a) *Attorney member* means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* means a member of a recipient's governing body or policy body.

(c) *Eligible client member* means a board member who is financially eligible to receive legal assistance under the Act and part 1611 of this chapter at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s) in accordance with written policies adopted by the recipient.

(d) *Governing body* means the board of directors or other body with authority to govern the activities of a recipient receiving funds under § 1006(a)(1)(A) of the Act.

(e) *Policy body* means a policy board or other body established by a recipient to formulate and enforce policy with respect to the services provided under a grant or contract made under the Act.

(f) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under § 1006(a)(1)(A) of the Act.

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance and shall have a governing